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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 1097

SAMUEL JAMES, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Petitioner, Samuel James, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above entitled case on the 5th day of April, 1963, affirming the judgment of the United States District Court for the District of Columbia entering a judgment of conviction against petitioner.

OPINION BELOW

The opinion of the United States Court of Appeals for the District of Columbia is not yet reported , Fed. 2nd , U.S. Apps. D.C. , number 17,155, but is appended at page 1a of the appendix hereunto annexed.

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia Circuit was entered on April 5, 1963. The jurisdiction of the Court is invoked under Section 1254 of Title 28 of the United States Code and Rule 37(b) of the Federal Rules of Criminal Procedure. This Court extended the time to file this petition to and including May 14, 1963.

STATEMENT OF THE CASE

After the petitioners case had been submitted to the jury and the jury had deliberated over the course of two days, with the exception of the evening interval when the jury was permitted to go home over-night. The jury sent the Court the following written note: (J.A. Pg. 49)

> "After analyzing the testimony of the Newman and James trial we have been unable to reach a group decision at this time. One juror continues to have a reasonable doubt."
>
> "Foreman J. H. Linsby"

The court received the note and after conferring with counsel, refused to grant a mistrial, but decided it would not communicate with the jury and left them to continue deliberations. (J.A. Pg. 49) About two and one-half hours later the jury returned a verdict of guilty against the petitioner. (J.A. Pg. 30) The

above action of the trial court was objected to as being coercive. The appeal below followed, but the judgment entered upon the verdict was affirmed.

REASONS FOR GRANTING THE WRIT

Your petitioner says that the conduct of the trial Court, under the circumstances, comes within the rule of this Court, as announced in *Brasfield* v. *United States*, 272 U.S. 448, 71 L. ed. 345, in insulating the jury from coercive judicial action where there is a disclosure of jural division. While the facts in *Brasfield* involved an inquiry by the Court as to the standing or vote of the jury, it was the rationale of that case that coercion was inherent in the court action, not that such inquiry, absent the implicit forbidden invasion of the jurors office, ipso facto, required vacation of its subsequent verdict. As so interpreted, the Circuit Courts of Appeal, in applying *Brasfield*, have affirmed convictions where the inquiry was made, or, where the jury volunteered the status of its deliberations, if, by ameliorating admonitions, they were enjoined not to abandon 'reasoned opinions and firm convictions.' Compare, *Bowen* v. *United States*, 153 Fed. 2nd. 747. Where however there was no injunction against 'mere acquiescence', *Rogers* v. *United States*, 289 Fed. 2nd 433, or imputations of stubborness or suggestion of recalcitrance to dissenting minority jurors, *Powell* v. *United States*, 279 Fed. 2nd 318, the Circuit Courts have applied the sanction advised by the holding in *Brasfield*, supra.

Regarding the criterion for the application of the principle here concerned, it would seem that coercion of dissenting jurors is the gravamen of the problem not the particular form which it takes. Your peti-

tioner says that the application of the principles of *Brasfield* v. *United States*, supra, would require a reversal of the conviction entered against petitioner.

While the cases cited have been pitched generally on the fact predicate that the Court made the inquiry, the reasoning seems to proceed on the fact that the disclosure operates as a wedge in the door to the jury room and an undesirable pressure on jurors in their proceedings. The minority juror, now exposed, cannot but feel that his reasonable doubt, disclosed at the termination of their considerations is merely a disposable without regard as to whether his doubt is the product of his reasoned opinion and firm conviction.

CONCLUSION

For the reasons hereinbefore states, it is respectfully submitted that the petition of a writ of certiorari should be granted.

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